

SECTION 3. WET LEASE AGREEMENTS

1895. GENERAL. The term “wet lease” is a leasing agreement whereby a certificate holder agrees to provide an aircraft and at least one crewmember to another direct air carrier. The words “certificate holder” refer to a U.S. person authorized to operate aircraft for compensation or hire under Parts 121 or 135.

FYI: This section applies only to the wet lease of any aircraft between U.S. air carriers or operators holding out to the public. See section 4, chapter 4 of volume 2 for the wet lease of any aircraft by a U.S. air carrier to a foreign air carrier or foreign person engaged in common carriage operations solely outside the United States.

1897. PROCESSING WET LEASE AGREEMENTS. The lessor is required to submit a copy of the lease agreement or a written memorandum of the terms of the lease to the certificate holding district office for processing. This agreement should be immediately reviewed by the principal inspectors to assure that it is complete. Following this review, the principal inspectors should make a written operational assessment of whether the lessor or the lessee will have operational control under the terms of the lease. A copy of the lease agreement and the written operational assessment should be expeditiously forwarded to the Regional Flight Standards Division, for a legal determination by the Regional Counsel as to which party to the agreement holds responsibility for operational control and the applicability of the FAR's and associated operations specifications. The Office of the Secretary of Transportation often characterizes a lease as a wet lease. The characterization does not necessarily make the lessor responsible for operational control. When a determination of operational control is made, the certificate holding district office will be advised without delay. This decision must be recorded in writing and maintained in the district office files. The lessor may be asked to submit any clarifying or supplemental information regarding the lease needed for making proper determination of operational control.

1899. DETERMINATION OF OPERATIONAL CONTROL.

A. FAR 121.6 provides that the FAA shall determine that a person has operational control if that person exercises authority and responsibility for a specified number of operational functions, such as assigning crewmembers for particular flights, directly paying crewmembers for services, and initiating and terminating flights. In cases where doubt or controversy exists, the Administrator shall also consider additional factors, such as who is responsible for maintenance, servicing, and crewmember training.

B. If two FAA regions are involved in the leasing arrangement, the regions will coordinate the matter and agree on respective responsibilities based on the terms of the lease agreement and, if applicable, the pertinent DOT order. The region responsible for the U.S. carrier or operator which has been determined to hold operational control shall have primary responsibility for the operations specifications authorization and surveillance of the operation.

C. The FAA determination of whether the lessor or lessee has operational control will be made by the responsible region (normally the region holding the certificate of the lessor). Such determination will be based on a careful review of the lease agreement, the DOT order, and any other circumstances regarding the actual operation. Inspectors should pay particular attention to the requirements of SFAR 38-2. These requirements prohibit any Part 121 or Part 135 operator from conducting any flight operation unless the operator is authorized by its operations specifications to conduct that kind of operation, (domestic, flag, supplemental, commuter, or on-demand operations). An operator must also meet each FAR 121 and 135 requirement applicable to the kind of operation specified in the wet lease agreement.

D. The FAA has taken the position (concerning the safety regulations) that if a person leases an aircraft to another person and also provides the flight crew, fuel, and maintenance, the lessor of the aircraft is the operator. If the lessor charges for the aircraft and services, the operation of the aircraft is subject to SFAR 38.2 and FAR 121 and 135. This position is supported by *U.S. v. Bradley*, 252 P. Supp. 804 (1966), and *B & M Leasing Corp. v. U.S.*, 331 P.2d 592 (1964).

1901. AMENDING OPERATIONS SPECIFICATIONS.

After the appropriate Flight Standards Division and Regional Counsel jointly determine which party to the agreement has operational control, the manager of the appropriate certificate holding district offices shall be advised in writing within 5 working days. The district office having responsibility for the certificate holder (determined by the FAA to have operational control) shall amend the operations specifications of that certificate holder (see paragraph A28 of operations specifications). The amendment to the operations specifications shall contain the following information:

- The names of the parties to the agreement and the duration of the agreement

- The make, model, and series of each aircraft involved in the agreement
- The kind of operation (for example, domestic, flag, supplemental, commuter, or on-demand)
- The expiration date of the lease agreement
- A statement specifying the party deemed to have operational control
- Any other item, condition, or limitation the Administrator determines necessary

1902. - 1906. RESERVED.

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